
TITLE 326 AIR POLLUTION CONTROL BOARD

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #07-24**

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT REDESIGNATION OF ALLEN COUNTY FOR THE 8-HOUR OZONE NATIONAL AMBIENT AIR QUALITY STANDARD

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 1-4-1](#) concerning the redesignation of Allen County to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS) and will schedule a public hearing before the Air Pollution Control Board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: [326 IAC 1-4-1](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-14-9-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-8](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7\(a\)\(2\)](#) from:

(A) exposing the rule to diverse public comment under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

(B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#); and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

BACKGROUND

On April 30, 2004, U.S. EPA published nonattainment designations for 24 Indiana counties, entirely or in part, for the 8-hour ozone NAAQS (69 FR 23858). The standard is set at 0.08 parts per million (ppm). Allen County was designated as basic nonattainment for the standard. These designations require Indiana to develop a plan to reduce volatile organic compound (VOC) and oxides of nitrogen (NO_x) emissions and make a demonstration that the areas will meet the 8-hour ozone NAAQS by June 15, 2009.

Ozone monitoring data and photochemical modeling analyses demonstrate that air quality has met the NAAQS for ozone in Allen County in advance of the development of an attainment plan. Air quality in this area has improved largely as a result of regional NO_x reductions from power plants implemented in 2004. As a result, Indiana requested U.S. EPA to change the 8-hour ozone designation for Allen County from nonattainment to attainment. Indiana submitted the redesignation request on May 30, 2006, for this county. Included with this request were summaries of relevant air quality data, evidence of the opportunity for public review of the requests, including public hearings, and a discussion of how the various criteria for redesignation have been met.

U.S. EPA published approval of Indiana's request to redesignate Allen County to attainment for 8-hour ozone in the Federal Register on January 11, 2007 (72 FR 1292). U.S. EPA has also approved the maintenance plan for Allen County, which includes maintaining existing programs and air monitoring. The federal action becomes effective on February 12, 2007. U.S. EPA evaluated Indiana's request for redesignation based on a review of the five prerequisites for redesignation of areas from nonattainment to attainment as identified by Clean Air Act Section 107(d)(3)(E). These criteria are:

1. The area has attained the applicable air quality standards.
2. The area has a fully approved State Implementation Plan (SIP) under Section 110(k) of the Clean Air Act.
3. U.S. EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.
4. U.S. EPA has determined that the maintenance plan for the area has met all of the requirements of Section 175A of the Clean Air Act.
5. The state has met all requirements applicable to the area under Section 110 and Part D of the Clean Air Act.

IDEM is proposing to make changes to Indiana's rules for consistency with the federal redesignation of Allen County to attainment for the 8-hour ozone NAAQS.

A notice under [IC 13-14-9-8](#) is appropriate for this rule action because it is a direct adoption of federal requirements and will contain no amendments that have a substantive effect on the scope or intended application of the federal rules. IDEM conducted a public hearing for Allen County as required by Section 100(a)(2) of the Clean Air Act to ensure proper public participation.

This rulemaking will incorporate into state rules the final federal approval for redesignating Allen County to attainment for the 8-hour ozone NAAQS. Until the state rulemaking is effective, this county will be subject to the state's nonattainment rules, including the permitting rules. Rules included in the maintenance plan for this county continue to apply to the redesignated area.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/compliance/ctap/index.html

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Stacey Pfeffer
IDEM Office of Voluntary Compliance
OPPTA - MC60-04
100 N. Senate Avenue, W-041
Indianapolis, IN 46204-2251
(317) 233-5624
spfeffer@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking concerning redesignation of Allen County to attainment for the 8-hour ozone NAAQS as required by federal rule. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana, and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana must adopt this rule in order to take advantage of the federal redesignation of Allen County to

attainment so that air permits for the applicable emissions in this county can be issued under the Prevention of Significant Deterioration (PSD) program, rather than the emission offset program.

(3) The public will benefit from prompt adoption of this rule, because it provides consistency with the federal rule that redesignated Allen County to attainment for the 8-hour ozone NAAQS.

(4) I have determined that, under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.

(5) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Christine Pedersen, Rules Section, Office of Air Quality (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 1-4-1](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-4-1](#) Designations

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 1. (a) The air pollution control board incorporates by reference 40 CFR 81.315, revised as of July 1, 2004*, as amended by the following documents concerning attainment status designations:

- (1) 69 FR 23900 (April 30, 2004)*.
- (2) 70 FR 44475 (August 3, 2005)*.
- (3) 70 FR 56131 (September 26, 2005)*.
- (4) 70 FR 69097 (November 14, 2005)*.
- (5) 70 FR 69454 (November 16, 2005)*.
- (6) 70 FR 77042 (December 29, 2005)*.
- (7) 71 FR 544 (January 5, 2006)*.
- (8) 72 FR 1295 (January 11, 2007)*.**

(b) For purposes of permits that are subject to [326 IAC 2-3](#) due to the designations in subsection (a)(1), notwithstanding [326 IAC 2-3-2\(a\)](#) and [326 IAC 2-3-2\(e\)](#), the requirements of [326 IAC 2-3](#) apply to any permit that:

- (1) would otherwise be subject to [326 IAC 2-3](#); and
- (2) is issued on or after the effective date of the incorporation of 69 FR 23900.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Air Pollution Control Board; [326 IAC 1-4-1](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056; filed Nov 15, 2002, 11:17 a.m.: 26 IR 1077; filed Dec 1, 2003, 10:00 a.m.: 27 IR 1167; filed Nov 12, 2004, 12:15 p.m.: 28 IR 1182; filed Sep 26, 2006, 10:03 a.m.: [20061025-IR-326060018FRA](#))

[Notice of Public Hearing](#)

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